REMARKS

Reconsideration of this application in view of the above amendments and the remarks below is respectfully requested. Claim 13 has been amended. Thus, Claims 1-4, 7-16, 18-24, 27-32, and 35-38 are pending in the application. The issues within the Office Action mailed July 1, 2008, will now be addressed, in order of appearance.

I.   ISSUES NOT RELATING TO PRIOR ART

Claims 13-16 and 18-20 stand are rejected under 35 U.S.C. § 101 (Office Action, page 2, section 1). Claim 13 has been amended.

The Office Action states that claims 13-18 are rejected under 35 U.S.C. § 101, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action asserts that "claim 13-18 are non-statutory because are directed towards software, per se, lacking storage on a medium, which enables any underlying functionality to occur." (Office Action, page 3) This is incorrect.

The disclosure includes FIG. 4 and the specification describes the elements in the computer system 100 depicted in FIG. 4. Paragraph [0037] of the specification states, "FIG. 4 is a block diagram that illustrates a generic network device (for example a network access device or an end-user device) upon which an embodiment of the invention may be implemented. **The device** may be **any computer device** requiring or providing access to a network including, but not limited to, a router, firewall, switch, VPN concentrator, desktop or laptop **computer**, a personal digital assistant (PDA), or a cell phone or other embedded device. **Device 100** includes a **bus 102** or other communication mechanism for communicating information, and **a processor 104** coupled with **bus 102** for processing information. **Computer system 100** also includes a **main memory 106**, such as a random

access memory ("RAM") or other dynamic storage device, coupled to **bus 102** for storing information and instructions to be executed by **processor 104**." (Emphasis added.)

Therefore, the network device in claim 13 may be **computer system 100** and the means may include, for example, not only **main memory 106** with programmed instructions, but also **processor 104** and **bus 102**. Further, according to the paragraph [0037] of the specification, claims 13-18 can be reasonably interpreted in one embodiment as a system of computer hardware that operates according to stored instructions.

In addition, claim 13 now recites "[a] network device, comprising: a network interface capable of being coupled to a computer network and for sending to the network access requests, a processor and a computer-readable storage medium having one or more stored sequences of instructions which, when executed, cause the processor to perform the steps of [...]." Therefore, claims 13-18 cannot be reasonably interpreted as a system of software "per se." Claim 13-18 may encompass a computer system, for example.

Thus, claims 13-18 are directed to statutory subject matter in the form of a machine or an article of manufacture.

Reconsideration and withdrawal of the rejection of claims 13-18 under 35 U.S.C. §101 is respectfully requested.

II.   ISSUES RELATING TO PRIOR ART

Claims 1-4, 7-16, 18-24, 27-32 and 35-38 are rejected under 35 U.S.C. § 103 as allegedly unpatentable over Balasubramanian et al. (US Patent 6,874,099) in view of Fu et al. (US Patent 6,970,873) (Office Action, page 2, section 3). The rejection is respectfully traversed.

For convenient reference, Claim 1 is repeated herein.

A method for diagnosing and repairing network devices on a network based on scenarios, comprising:
aggregating responses to a selectable list of queries for a plurality of scenarios on the network from a plurality of applications on the network devices; and

      detecting modifications to the network and automatically modifying the queries to match the modifications;

      automatically evaluating the responses to formulate corrective actions to address the scenarios for the applications;

      wherein the step of aggregating responses further comprises:

      filtering the responses according to a predetermined template of a plurality of templates; and

      organizing the responses in a format that conforms to a format of the specific predetermined template.

From the above it is apparent that Claim 1 recites "automatically evaluating the responses to formulate corrective actions to address the scenarios for the applications". Claims 21 and 29 recite similar subject matter. Meanwhile, Balasubramanian's Integrated Monitoring System (IMS) product locates breakdowns in the network, potentially sends notifications, but does not "formulate corrective action" as claimed. Instead, Balasubramanian discusses notifications, e.g. send an e-mail, telephone page, or direct phone call (col. 6, lines 24-28), and a notification system 155 (numerous places within col. 6). However, Balasubramanian never suggests "formulat[ing] corrective action" or any equivalent.

Additionally, the claimed "detecting modifications to the network and automatically modifying the queries" is not found in Balasubramanian. In rejecting this portion of Claim 1, the Office Action asserted that Balasubramanian states that new programs can be added and existing programs updated when changes are made to the network or devices. However, Balasubramanian does not disclose doing any of these steps automatically, and the programs are not "queries" as claimed.

Claim 1 recites automatically modifying queries based on modifications to the network, while Balasubramanian does not discuss modifying queries. At most, Balasubramanian only discloses modifying the overall monitoring system (IMS), and the

programs within that IMS, but and not modifying any queries which may occur within that

monitoring system.

The "Response to Arguments" section of the Office Action asserts the following.

> [P]rocessing queries through the monitoring programs is the central objective of Balasubamanian. Each monitoring program issues test signals, or queries, to a component on the network, and collects the results. Control of the monitoring programs, and therefore queries, is provided through an Administrative GUI (**1**). Modifications can be made to the monitoring program – programs can be added, and programs can be updated (**2**). When a modification is made to the monitoring programs, the queries are also inherently modified. In the simplest case, a new monitoring program is added to the list of monitoring programs, resulting in new (**3**) queries for the new monitoring program being added to the list of queries. Thus, Balasubramanian teaches modifiable queries in response to modifications of the network. (Office Action, pages 8-9, section 4, numbering added)

These assertions are now addressed, in order of their appearance.

Regarding (1) above, Balasubramanian's Administrative GUI has no direct effect on

the test signals, and does not and cannot cause any of the test signals to be modified.

Regarding (2) above, the adding and updating of programs is performed by a user

only, and thus not automatic in any context. Additionally, Claim 1 recites "detecting

modifications to the network and automatically modifying the queries to match the

modifications". Earlier, the Office Action asserted that Balasubramanian's programs

corresponded with the claimed queries, and thus are not part of the network itself.

Consequently, Balasubramanian's adding and updating of programs would not correspond

with the claimed "detecting modifications to the network" and taking other steps accordingly.

Regarding (3) above, even if the claimed queries are suggested by Balasubramanian's

programs and/or test signals, which Applicant does not concede, adding programs resulting

in "new" test signals is not equivalent to the claimed "automatically modifying the queries".

Any new programs added within Balasubramanian were added by a user, and thus were not added automatically, and are not modifications.

For at least the above reasons, the rejections of Claims 1-4, 7-16, 18-24, 27-32 and 35-38, as well as the rejections of all claims dependent therefrom, are unsupported and should be withdrawn.

Claim 38 recites, inter alia, "the step of aggregating responses further comprising retrieving specific types of data from distinct applications of differing network devices". The Office Action asserts that this feature is disclosed within Balasubramanian's column 4, line 56-colum 5, lines 6 and also column 8, lines 3-11 (Office Action, page 8, first full paragraph). Applicant disagrees.

The cited sections state only that Balasubramanian's IMS can work with (but not necessarily aggregate) third-party systems such as NEW, GetAcess, WebLogic, SilkNet, and TPBroker. These products are not described as having specific types of data from differing network devices. Any suggestion otherwise is speculative and beyond the scope of and not supported by the limited amount of information disclosed within Balasubramanian.

For at least the above reasons, the rejection of Claim 38 is unsupported and should be withdrawn.

All remaining Claims were rejected under 35 U.S.C. § 103 as allegedly obvious over a variety of references using Balasubramanian as a base reference. However, all of these Claims either explicitly recite or depend from other Claims which recite elements or steps which as shown above are neither disclosed nor suggested by any combination of prior art, either by Balasubramanian or by any other reference. The secondary references do not cure this deficiency of Balasubramanian, and therefore any combination of Balasubramanian with

any of the secondary references cannot provide the complete combination of features recited in the remaining claims.

III.   CONCLUSION

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to charge any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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Date: Aug 26, 2008   _____

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